

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1431

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :

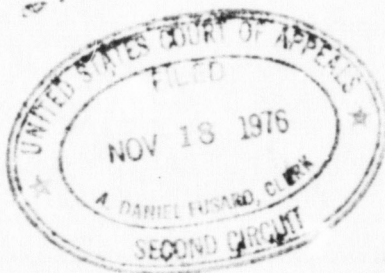
WILLIAM ALGARIN :

Defendant-Appellant :

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Pg 5

APPENDIX FOR APPELLANT WILLIAM ALGARIN



ABRAHAM SOLOMON
Attorney for Defendant-Appellant
85 Baxter Street
New York, New York 10013

PAGINATION AS IN ORIGINAL COPY

- 75 Filed CJA-21 appointment of Interpreter Ike Trabount,
67-95 Clyde St., Forest Hills, N.Y. 11375
Issued all copies. POLLACK J.
- 76 Filed CJA-21 Approval for payment of fees for
Interpreter Ike Trabount. Issued all copies.
POLLACK J.
- 77 Filed transcript of record of proceedings, dated July 24, 1976.
- 78 Filed Judgment (Atty Abraham Solomon & Norman Seiner,
Interpreter.) The deft. is hereby committed to the
custody of the Atty. General or his authorized repre-
sentative as a YOUTH OFFENDER on count 5 pursuant
to Section 5012(a) of Title 18, U.S.Cole. Imposition
of sentence is suspended. Deft. is placed on Probation
for a period of THREE (3) YEARS, subject to the
standing probation order of this court...POLLACK, J.
Issued all copies.
- 79 Filed deft's notice of appeal from judgment of
9-20-76. mailed copies
Leave to appeal in forma pauperis is granted.
Pollack, J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 APR 14 45

UNITED STATES OF AMERICA

- v -

INDICTMENT

76 Cr.

GERARDO MEDINA MARTINEZ,
a/k/a "Junior", PEDRO VAZQUEZ,
WILLIAM ALCARIN, and JOSE COLON
RODRIGUEZ,

Defendants.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1976,
and continuously thereafter up to and including the date
of the filing of this indictment, in the Southern District
of New York, GERARDO MEDINA MARTINEZ, a/k/a "Junior",
PEDRO VAZQUEZ, WILLIAM ALCARIN, and JOSE COLON RODRIGUEZ,
the defendants, and others to the Grand Jury unknown,
unlawfully, intentionally and knowingly combined, conspired,
confederated and agreed together and with each other to
violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title
21, United States Code.
2. It was part of said conspiracy that the said
defendants unlawfully, intentionally and knowingly would
distribute and possess with intent to distribute Schedule I
narcotic drug controlled substances, the exact amount thereof
being to the Grand Jury unknown, in violation of Sections
812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States
Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about February 20, 1976, the defendant GERARDO MEDINA MARTINEZ, while in an apartment at 347 East 10th Street, New York, New York, sold to an undercover

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officer of the Drug Enforcement Administration Task Force approximately one ounce of heroin for \$1800.

2. On or about February 26, 1976, the defendant GERARDO MEDINA MARTINEZ, while in Apartment 20 at 347 East 10th Street, New York, New York, sold approximately two ounces of heroin for \$3200.

3. On or about March 12, 1976, the defendant GERARDO MEDINA MARTINEZ stated that his brother would be arriving from Chicago the following week with three hundred ounces of heroin.

4. On or about March 12, 1976 the defendant GERARDO MEDINA MARTINEZ, while in Apartment 13D at 60 Columbia Street, New York, New York, sold approximately one and one-half ounces of heroin for \$2400.

5. On or about April 28, 1976, the defendants GERARDO MEDINA MARTINEZ, WILLIAM ALGARIN and PEDRO VAZQUEZ, while in the vicinity of East 11th Street and Avenue B, New York, New York, had a meeting to discuss the delivery of some heroin.

6. On or about April 28, 1976, at which time defendant WILLIAM ALGARIN was present, the defendant PEDRO VAZQUEZ told the defendant GERARDO MEDINA MARTINEZ to count money to be received as payment for a sale of heroin.

7. On or about April 28, 1976 the defendants GERARDO MEDINA MARTINEZ and WILLIAM ALGARIN met with JOSE COLON RODRIGUEZ.

7. On or about April 28, 1976 the defendants GERARDO MEDINA MARTINEZ and WILLIAM ALGARIN met with JOSE COLON RODRIGUEZ.

8. On or about April 28, 1976, while in the premises at 11th Street and Avenue B, New York, New York, the defendant JOSE COLON RODRIGUEZ stated that no one should leave those premises until money was delivered in payment for a quantity of heroin.

(Title 21, United States Code, Section 841.)

COUNT TWO

The Grand Jury further charges:

On or about the 20th day of February, 1976 in the Southern District of New York, GERARDO MEDINA MARTINEZ, a/k/a "Junior", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one ounce of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THREE

The Grand Jury further charges:

On or about the 26th day of February, 1976, in the Southern District of New York, GERARDO MEDINA MARTINEZ, a/k/a "Junior", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of March, 1976, in the Southern District of New York, GERARDO MEDINA MARTINEZ, a/k/a "Junior", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one and one-half ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of March, 1976, in the Southern District of New York, GEFARDO MEDINA MARTINEZ, a/k/a "Junior", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one and one-half ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

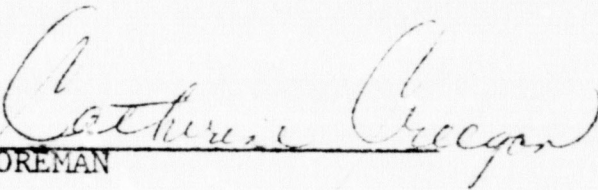
The Grand Jury further charges:

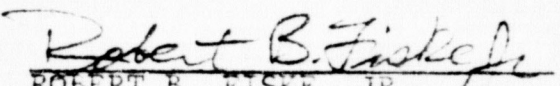
On or about the 26th day of April, 1976, in the Southern District of New York, GEFARDO MEDINA MARTINEZ, a/k/a "Junior", PEDRO VASQUEZ, WILLIAM ALCAZAR, and JOSE GONZALEZ RODRIGUEZ, the defendants, unlawfully, intentionally

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and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately four and one-half ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

JUDGE POL

7 (Form 5)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

GERARDO MEDINA MARTINEZ, a/k/a "Junior", PEDRO VAZQUEZ, WILLIAM ALGARIN, and JOSE COLON RODRIGUEZ,

Defendants.

INDICTMENT

76 Cr.

(21 U.S.C. §§ 846, 812, 841(a)(1) and 841(b)(1)(A); 18 U.S.C. § 2.)

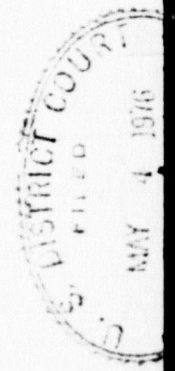
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Foreman.

FPI-38-2-18-71-20M-6959



MAY 13 1976

W. J. G. ... Martinez ... Stanley ...

W. J. G. ... Rodriguez ...

W. J. G. ... Rodriguez ...

W. J. G. ... Rodriguez ...

JUL 20 1976

GERARDO MEDINA MARTINEZ (d.o.b. 7/3/52) (atty Stanley V. Tellerman present)
Pleads guilty thru interpreter Sylvia Aguilar. Pre-sentence report ordered.
For sentence August 21, 1976 at 10 A.M., Rm. 106. Deft. Remanded in lieu of bail.
(J. Benoit, Rptr.)

JUL 20 1976

F. VALDEZ; W. ALGARIN and J. RODRIGUEZ (attys Lester Tellerman, Abraham Salazar and Alexander Spitzer present) (see present and Sylvia Aguilar, interpreters, now in Court) (J. Benoit, J. Pollack, J. Jury Room Room. (11:30 A.M.))

JUL 21 1976

TRIAL CONTD. GOVERNMENT

Part. All DEFENDANTS Part. Count One is Dismissed as to All three defts, all other motions are denied.

JUL 22 1976

Trial Contd and concluded.

JURY VERDICT (3:30 P.M.) ---

DEFT. PEDRO VALDEZ Found Not guilty. Bail exonerated. Deft. discharged. ---
DEFT. WILLIAM ALGARIN found GUILTY as charged on ct. 5. ---
DEFT. JOSE COLON RODRIGUEZ found GUILTY as charged on ct. 5. ---
---Jury Polled. Jury excused. ---DEFT. WILLIAM ALGARIN Remanded in lieu of increased bail of \$5,000. cash. ---DEFT. JOSE COLON RODRIGUEZ continued on present bail and given until July 27, 1976 at 3 P.M., to post an additional \$1,000. cash bail. ---
DEFTS. ALGARIN & RODRIGUEZ -Pre-sentence report ordered. For sentence Sept. 20, 1976 at 2 P.M., Room 506. POLLACK, J.
(J. Benoit, Rptr.)

AUG 24 1976

GERARDO MEDINA MARTINEZ, a/k/a "Junior" (d.o.b. 7/12/52) (atty Stanley V. Tellerman present) SENTENCED. FIVE YEARS on each of cts. 1, 2, 3, 4 and 5 to run concurrently with each other. Pursuant to the provisions of T. 21, U.S.C., Section 361, the deft. is placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement. Deft. Remanded. POLLACK, J.

(L. Benoit, Rptr.)

SEP 20 1976

WILLIAM ALGARIN (atty Abraham Salazar present) -SENTENCED as a YOUTH OFFENDER on count 5 pursuant to Section 5010(a) of Title 18, U.S. Code. Imposition of sentence is suspended. Defendant is placed on probation for a period of THREE(3) YEARS, subject to the standing probation order of this Court. Deft. advised of his right to appeal. Defendant is discharged from custody. POLLACK, J.

JOSE COLON RODRIGUEZ (atty Lester Tellerman present) -SENTENCED on count 5 for a term of ONE YEAR, and on condition that deft. be confined in a JAIL TYPE institution for a period of THREE YEARS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3) YEARS, subject to the standing probation order of this Court. T.18, U.S.C., Section 3651. --Pursuant to the provisions of T. 21, U.S.C., Section 361, the deft. is placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement. The Special Parole is to run CONCURRENTLY with the term of probation. --Deft. advised of his right to Appeal. --Deft. is continued on present bail pending appeal on condition that he promptly file his appeal.
(E. Benoit, Rptr.)

1 jbesb-1

2 UNITED STATES OF AMERICA

3 vs.

76 Cr. 445

4 GERARDO MEDINA MARTINEZ, et al.

5
6 July 22, 1976
7 10:00 a.m.

8 (Trial resumed, jury present.)

9 THE COURT: Good morning, ladies and gentlemen.

10 THE CLERK: The Court is about to charge the
11 jury. Any spectators wishing to leave the courtroom will do
12 so now or remain seated until the completion of the Court's
13 charge.

14 Mr. Marshall, please lock the door.

15 CHARGE OF THE COURT

16 THE COURT: Members of the jury, we have reached
17 the concluding phase of this trial. I shall now give you
18 your final instructions on the law and these will guide your
19 deliberations.

20 I want to express to you the Court's
21 appreciation for your attentiveness and patience during
22 this trial as befits the triers of fact in a case of
23 importance to the parties.

24 The indictment in this case names four defendants
25 but only three are before you in this particular trial for

reasons with which you have no concern.

Those named and who are on trial are Pedro Vazquez, William Algarin and Jose Colon Rodriguez and it is as to these three that you are called upon to find them to be guilty or not guilty in your verdict, although, as I will explain to you shortly, in considering whether any of them are guilty or not guilty, you may have to determine the nature of the participation, if any, in the case of the fourth who is not on trial here, Gerardo Medina Martinez, the fourth person named in the indictment.

You are called upon to consider only one count against the defendants on trial. That count charges that on April 28, 1976, the four persons distributed and possessed with intent to distribute four ounces of heroin.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of a defendant on trial before you must be determined separately with respect to him, separately with respect to each and solely on the evidence presented or the lack of evidence.

It is your recollection of the facts that counts here and not the recollection of counsel and not my recollection. It is for you to determine the weight that will be given to the evidence, the credibility that you will

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2 extend to the witnesses who testify and the reasonable
3 inferences that are to be drawn from the evidence that has
4 been received.

5 As I stated, the count charges that on April 28,
6 1976, the defendants Martinez, Vazquez, Algarin and
7 Rodriguez unlawfully, willfully, intentionally and knowingly
8 distributed and possessed with intent to distribute four
9 ounces of heroin.

10 You must approach your duty with an attitude of
11 complete fairness and impartiality without the slightest
12 trace of sympathy, prejudice or bias, either for or against
13 the Government or any of the defendants.

14 It is my province to instruct you as to the
15 legal principles that are to be followed in the case and it
16 is your duty to accept those instructions as they are given
17 to you by me. On the other hand, it is your exclusive
18 function to determine the facts on the basis of your
19 consideration of the evidence and then applying the
20 instructions as to the law that I am about to give you, to
21 decide whether or not the defendant on trial before you is
22 guilty of the charges made against that defendant.

23 You are the sole and exclusive judges of the
24 facts. Your decision as to the fact is final and conclusive.
25 It is essential in the performance of your duty that

1 jbesb-4
2 anything ordered stricken from the record you put out of
3 your mind and disregard it. Similarly, if a question was
4 asked and an objection to that question was sustained and no
5 answer was given, the question itself should play no part in
6 your consideration of the case.

7 No inferences as to guilt or innocence of any
8 defendant on trial or as to the credibility of any witness
9 should be drawn from any rulings that I have made or from
10 the fact that on occasion I may have asked questions of
11 certain witnesses. Any questions that were asked were
12 intended only for clarification or to expedite matters.
13 They were not intended to suggest any opinions on my part as
14 to the guilt or innocence of any defendant or as to the
15 credibility of anyone who appeared before you.

16 It is neither my intention nor my function to
17 favor one side or the other or to imply that I have any
18 views as to the credibility of any of the witnesses or as to
19 the guilt or innocence of any of the defendants. That is
20 your sole function and it is exclusive to you.

21 In evaluating the evidence which has been placed
22 before you, you will determine the reliability of the
23 witnesses you have heard and the extent to which you can
24 count on any or all of them for accurate accounts of the
25 facts.

1
2 You have had an opportunity to observe those
3 witnesses as they testified. You will be asking yourselves
4 and thinking together how each witness impressed you:

5 Did the witness appear to be truthful, candid,
6 frank and forthright or did the witness seem evasive or
7 shifty or suspect in any other way. Did the witness appear
8 to know what he was talking about, and did he impress you as
9 having a purpose to report his knowledge to you carefully,
10 conservatively, truthfully and accurately? Was he
11 consistent or self-contradictory? How did the manner and
12 matter of his direct testimony compare with his manner and
13 matter of testimony tested on cross-examination?

14 It frequently happens when numerous details or
15 events have been called for that a witness refers to reports
16 contemporaneously prepared to refresh recollection. That
17 is not unusual. And the law allows one to be refreshed in
18 his recollection.

19 However, you will judge the need, therefore, in
20 the light of your own experience and understanding of human
21 behavior and memory. You should consider not only the
22 intrinsic persuasiveness of each person's testimony by
23 itself but its setting in the circumstances of the whole
24 case -- for example, the degree to which any particular item
25 of testimony is corroborated or contradicted by other

1 jbesb-6

2 evidence in the case and all such things. You will test
3 these by your own mature judgment about life and about people
4 and about human behavior.

5 A witness may be discredited or, as we say,
6 impeached by contradictory evidence or by evidence that at
7 other times he made statements inconsistent with his
8 testimony here on the witness stand.

9 You should consider, among other things, the
10 question of interest or motives. The witnesses have
11 identified their backgrounds and associations. If you
12 believe that a witness has willfully sworn falsely before
13 you, you are free to disregard all of his testimony or to
14 accept and credit those parts of it as your judgment
15 dictates should be accepted.

16 Two of the defendants took the witness stand as
17 witnesses on this trial. Having chosen voluntarily to
18 testify, you are to judge their credibility by the same
19 standards and tests by which you judge **every** other witness'
20 credibility.

21 Interest creates a motive for false testimony.
22 The defendant, of course, has a deep personal interest in
23 the outcome and this interest may be considered along with
24 all the other evidence in weighing his testimony and
25 determining how far and to what extent it is worthy of

1 jbesb-7

2 belief. It by no means follows that simply because a
3 defendant has a vital interest in the end result he is not
4 capable of telling the truth, but it is for you to decide
5 to what extent, if at all, his interest has affected or
6 shaded his testimony.

7 There are, generally speaking, two types of
8 evidence from which a jury may properly find the truth in
9 the facts of the case. One is direct evidence, such as the
10 testimony of an eyewitness or a participant. The other is
11 indirect or circumstantial evidence, the proof of a chain of
12 circumstances pointing to the existence or non-existence of
13 certain facts.

14 In order to prove a fact by circumstantial
15 evidence, there must be positive proof of some fact which
16 though true does not itself directly establish the fact in
17 dispute but does afford a reasonable basis for a reasonable
18 inference of its existence. The fact or facts upon which it
19 is sought to base an inference must be shown and not left to
20 conjecture and when shown, it must appear that the
21 inference drawn is the only one that can fairly and
22 reasonably be drawn from the facts and that any other
23 explanation is fairly and reasonably excluded.

24 Now, let me give you a common example of
25 circumstantial evidence and what I have been trying to say

1 jbesb-8

2 to you to illustrate the point:

3 Suppose at the time you came into court this
4 morning, the sun was shining and there were no clouds in the
5 sky and when you came into this trial courtroom the blinds
6 were drawn and the shades were down so that you could not
7 see outside. Pretty soon, someone came through that door,
8 walking into the courtroom with a dripping umbrella and a
9 dripping raincoat. You have not been outside in the
10 meantime and when you left outside, it was clear but when
11 this person came in with his dripping umbrella and raincoat,
12 you might infer that something may have happened outside.
13 You would be entitled to infer from the circumstances that
14 there is a dripping umbrella and a raincoat that it is
15 raining outside. Thus, circumstantially, you infer from a
16 fact--the fact being the dripping raincoat and umbrella,
17 some other matter -- the rain outside.

18 The mind is led circumstantially from a fact to
19 reach another fact. That illustrates what circumstantial
20 evidence is and what it may lead to.

21 It is not necessary that the participation or
22 lack of participation of a defendant in any crime charged be
23 shown by direct evidence. The connection may be inferred
24 from such fact and circumstances as legitimately tend to
25 sustain that inference.

1 jbesb-9

2 In this case, of course, each side has produced
3 either on direct or cross-examination both direct and
4 indirect or circumstantial evidence. The direct evidence
5 consists of the heroin having been presented to you. You
6 have oral testimony subject to tests of recollection,
7 demeanor and credibility. The Government contends that its
8 direct evidence and circumstantial evidence establishes each
9 defendant's guilt. Each defendant contends that no evidence
10 has overcome the presumption of his innocence and that at
11 least there is a reasonable doubt of his guilt.

12 You will apply to all the evidence the same
13 standard of proof. It must satisfy you of the guilt of the
14 defendant beyond a reasonable doubt or else you must acquit
15 that defendant.

16 The indictment, as I explained to you previously,
17 is merely an accusation, a charge, a charge which brings the
18 defendant to the courtroom. It is not evidence or proof of
19 a defendant's guilt.

20 One of its purposes is to define the scope of
21 the proof at the trial. The Government has the burden of
22 proving the charges against the defendants beyond a reasonable
23 doubt. That is a burden that never shifts and remains upon
24 the Government throughout the trial.

25 A defendant under our law does not have to prove

1 jbesb-10

2 his innocence. On the contrary, he is presumed to be
3 innocent of the accusation contained in the indictment. A
4 defendant does not have to take the witness stand to
5 testify for himself. A defendant's failure to testify
6 cannot be considered by you as evidence against him or form
7 the basis for any presumption or inference unfavorable to
8 him.

9 The presumption of innocence was in the favor
10 of each of these defendants at the start of the trial,
11 continues in their favor throughout the trial, is in their
12 favor even as I instruct you now. It is removed only if
13 and when you have been satisfied that the Government has
14 sustained its burden of proving the guilt of the defendant
15 beyond a reasonable doubt.

16 By reasonable doubt we do not mean mathematical
17 certainty or proof beyond all possible doubt. We do mean a
18 doubt which is sufficient to cause a prudent person to
19 hesitate to act in a matter of importance to himself or
20 herself. If the evidence which you believe is such as
21 would induce a prudent person to act without hesitation in
22 a matter of importance to himself or herself, then you may
23 say you have been convinced beyond a reasonable doubt.

24 A reasonable doubt is not a speculative doubt.
25 It is not caprice or whim. It is not a guess. It is not a

1 jbesb-11

2 means by which to disregard or fail to perform an unpleasant
3 duty. It must be, as the words used say, a reasonable
4 doubt.

5 If, on the other hand, your mind is wavering or
6 uncertain to the point where you have a doubt that would
7 cause a prudent person to hesitate in a matter of
8 importance to him or her, then you have not been convinced
9 beyond a reasonable doubt.

10 As I indicated, "beyond a reasonable doubt" does
11 not mean to a positive certainty or beyond all possible
12 doubt. If the rule required positive certainty or beyond
13 all possible doubt, few persons, however guilty they might
14 be, would ever be convicted. Unless you are involved in a
15 matter capable of mathematical certainty, it is practically
16 impossible for a person to be absolutely and completely
17 convinced of a controverted fact. Consequently, the law
18 does not require mathematical certainty.

19 The law in a criminal case is that it is
20 sufficient if the guilt of a defendant is established beyond
21 a reasonable doubt, not beyond all possible doubt.

22 The indictment charges each of these defendants
23 on trial before you with violations of the Federal Narcotics
24 Laws on April 28, 1976. The Comprehensive Drug Abuse
25 Prevention Act of 1970 was passed by Congress because of

1 jbesb-12

2 concern with the illegal importation and distribution or
3 possession of narcotic drugs with a view to distribution
4 which have a substantial and detrimental effect on the health
5 and welfare of our people.

6 The part of this act which is applicable to the
7 charges here is called the Controlled Substances Act which
8 became effective on May 1, 1971. It is only necessary for
9 you to remember the conduct which the act forbids and the
10 essential elements of the offenses here charged.

11 The term "controlled substances" is used in the
12 act to refer to any drugs included in one of five schedules
13 contained in the Controlled Substances Act. Heroin is
14 included in Schedule 1. Among other things, it is made
15 unlawful for any person knowingly or intentionally to
16 distribute or possess with intent to distribute any
17 controlled substances, such as heroin. In addition, any
18 person who conspires to commit such offense commits a crime.

19 Another section of the law, Section 2 of
20 Title 18 of the United States Code, provides in pertinent
21 part, "Whoever commits an offense against the United States
22 or aids, abets, counsels, commands, induces or procures its
23 commission, is punishable just as a principal, just as if
24 he were the principal."

25 Let me turn to the specific charge against the

1 jbesb-13

2 defendants:

3 Title 21 of the United States Code, Section 841,
4 provides in pertinent part, "It shall be unlawfull for any
5 person knowingly or intentionally to distribute or possess
6 with intent to distribute a controlled substance."

7 The indictment charges all three defendants on
8 trial and Gerardo Martinez with the distribution or
9 possession with the intent to distribute the amount of heroin
10 that I mentioned. Before you can find any one of these
11 defendants guilty of the crime charged in this count of the
12 indictment, you must be convinced beyond a reasonable doubt
13 that the Government has proved each of the following
14 elements:

15 First, that on or about April 28, 1976, the
16 defendant you are considering did distribute or possess with
17 intent to distribute a narcotic drug controlled substance.

18 Second, that he did so unlawfully, willfully and
19 knowingly.

20 Third, that the substance charged to have been
21 distributed in the count is in fact a narcotic drug
22 controlled substance -- in this case, heroin.

23 I would like to say a few words on each of these
24 elements.

25 You will note that the first element of the

1 jbesb-14

2 offense is to distribute or possess with intent to distribute
3 the drug. What does that phrase mean?

4 I want to stress that it is sufficient if you
5 find beyond a reasonable doubt that the defendant you are
6 considering either distributed or possessed with intent to
7 distribute the narcotic drug.

8 The word "distribute" means the actual,
9 constructive or attempted transfer of the drug. The word
10 "possess" has its common everyday meaning -- that is, to
11 have something within your control, not necessarily in your
12 pocket or in your hand.

13 Possession may be of two types -- actual or
14 constructive. Actual possession means that a particular
15 person, a defendant, knowingly has personal, manual or
16 physical control of the drug, but constructive possession
17 means that although the drugs are in the physical
18 possession of another person, a defendant knowingly has the
19 power to exercise control over them or over their
20 distribution or to direct their movement or to cause their
21 delivery or aids and abets knowingly and intentionally in
22 respect thereof.

23 In other words, to possess something, you need
24 not have it in your hand or in your pocket, as I have said;
25 if it is within your power to exercise control over the

1 jbesb-15

2 drugs, you have possession of them.

3 Finally, the word "intent" refers to a person's
4 state of mind, so the term "possess with intent to
5 distribute" can be fairly stated to mean to control an item
6 with a state of mind or purpose to transfer or deliver that
7 item.

8 As to the second element, the term "unlawfully,
9 willfully and knowingly" means that you are to be satisfied
10 beyond a reasonable doubt that the defendant whom you are
11 considering knew what he was doing and that he acted
12 deliberately and voluntarily as opposed to mistakenly or
13 accidentally or as a result of some coercion. It is not
14 necessary he knew that he was violating any particular law.
15 It is sufficient if you are convinced beyond a reasonable
16 doubt that he was aware of the general unlawful nature of
17 his conduct.

18 Knowledge and intent exist in the mind. Since
19 it is not possible to look into a man's mind to see what
20 went on, the only way you have for arriving at a decision on
21 these questions is for you to take into consideration all
22 the facts and circumstances shown by the evidence, including
23 the exhibits, and to determine from all such facts and
24 circumstances whether the requisite knowledge and intent was
25 present at the time in question.

1
2 Direct proof is unnecessary. In this connection,
3 the Government contends that the defendants attempted to
4 conceal their narcotics activities on April 28, 1976 by
5 hiding their narcotics activities, by concealing the
6 narcotics themselves and by guarding and camouflaging their
7 conversations and by being secretive in their actions.

8 If you find circumstances of intrigue or
9 deviousness or attempts by a defendant to conceal or be
10 secret about the true nature of the transaction, this may
11 be considered as circumstantial evidence of knowledge of
12 unlawful purpose.

13 As to the third essential element, the indictment
14 charges that the narcotic drug controlled substance is
15 heroin. I instruct you as a matter of law that heroin is a
16 narcotic controlled substance. You, however, must still
17 find beyond a reasonable doubt that the substance is heroin.
18 You may consider the stipulation as to the testimony of the
19 Government chemist in this regard who, it was stipulated, if
20 called, would testify that heroin was part of this April 28,
21 1976 happening.

22 Finally, it is not necessary for the Government
23 to show as to the charge you are considering that a defendant
24 physically committed the crime himself. The law provides
25 that a person who aids and abets another to commit an offense

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2 is just as guilty of that offense as if he committed it
3 himself.

4 In the context of this case, accordingly, you
5 may find a defendant guilty of the offense charged in the
6 count you are considering if you find beyond a reasonable
7 doubt that Gerardo Martinez or another defendant committed
8 the offense with which he is charged within the count and
9 that the defendant whom you are considering aided and
10 abetted the one who committed the offense.

11 To determine whether a defendant aided and
12 abetted the commission of the offense charged, you ask
13 yourselves these questions:

14 Did he knowingly and intentionally participate
15 in it as something he wished to bring about?

16 Did he associate himself with the venture?

17 Did he seek by his action to make it successful?

18 If he did, then you may find that he is an
19 aider and abettor and, therefore, guilty in that way.

20 The duty of imposing sentence rests exclusively
21 upon a judge. Your function is to weigh the evidence in the
22 case and to determine the guilt or innocence of the
23 defendant you are considering solely upon the basis of the
24 evidence and the law.

25 Under your oath as jurors, you cannot allow a

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2 consideration of the punishment which might be inflicted
3 upon a defendant if convicted to influence you in your
4 verdict in any way or in any sense enter into your
5 deliberations.

6 You are to decide upon the evidence and the
7 evidence alone and you must not be influenced by any
8 assumptions, conjectures or inferences not warranted by the
9 facts until proven to your satisfaction.

10 You must consider the guilt or innocence of
11 each defendant individually. Further, as you probably
12 already know, a verdict of guilty or not guilty on the
13 count on which you are reporting must be unanimous to be
14 acceptable.

15 The issues for you to decide relate to an
16 offense under the narcotics laws. We are not engaged in a
17 popularity contest. When you enter the jury box, you are
18 not expected to check your common sense outside. You should
19 use your common sense and general experience in evaluating
20 all the testimony and circumstances in evidence and not be
21 confined or confused or diverted from the task that you are
22 here to perform. The task is to find the facts.

23 Please do not communicate with anyone concerning
24 your deliberations in this case except in writing signed by
25 your spokesman, who will be Mrs. Lovaro, the lady who sits

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2 in the first seat. She will be provided with pencil and
3 paper.

4 I would now like to take a moment to talk to
5 the lawyers at the side bar. They may wish to call to my
6 attention any matter that I may have overlooked or where I
7 may have misspoken, and I will ask you to relax for a
8 moment while I do that.

9 (At the side bar)

10 MR. SOLOMON: I don't know whether you put
11 mere association because at certain points you dropped your
12 voice. If you didn't, I ask you to cover mere association.

13 I put that in the conspiracy request but now
14 that the conspiracy is out, the request is withdrawn.

15 Outside of that, I have no objection.

16 MR. TABACOFF: No exceptions.

17 MR. SPITZER: No exceptions.

18 THE COURT: Any exceptions or objections to the
19 charge on the part of the Government?

20 MR. SIFFERT: Yesterday you said you would charge
21 on joint venture.

22 THE COURT: I think I have sufficiently charged
23 on the subject as indicated.

24 (In the presence of the jury.)

25 THE COURT: I should like to add that mere

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2 association, without more, of any defendant with any other
3 defendant is not sufficient by itself to establish
4 membership in a joint enterprise. The Government must
5 establish beyond a reasonable doubt that the defendant whom
6 you are considering entered into the transaction in some
7 measure and in some part with a specific criminal intent --
8 that is, with a purpose to violate the law.

9 So, if a defendant with understanding of the
10 unlawful character of the alleged transaction intentionally
11 engages, advises or assists or aids and abets for the
12 purpose of furthering the illegal undertaking, he thereby
13 becomes a participant in the transaction.

14 Does that cover it, Mr. Solomon?

15 MR. SOLOMON: Yes, your Honor. Thank you.

16 THE COURT: I believe that that also covers the
17 Government's suggestion.

18 MR. SIFFERT: Thank you, your Honor.

19 THE COURT: Ladies and gentlemen, you may now
20 go out for your deliberations but first, Miss Mendel and
21 Miss Jenkins, we have now reached the conclusion of the
22 trial and as alternates, you are excused with the thanks of
23 the Court.

24 (One marshal duly sworn.)

25 THE COURT: All right, now you may leave.

2 (At 10:37 a.m., the jury left the courtroom
3 to commence deliberations.)

4 THE COURT: Court's Exhibit 2 will be a
5 schedule of the 3500 material furnished by the Government to
6 the defendants, and it consists of two pages.

7 (3500 material marked Court's Exhibit 2.)

8 (Recess)

9 (11:20 a.m., in the courtroom, jury not
10 present.)

11 THE COURT: I have a note from the jury which
12 says, "Transcript, the statement made by Martinez to
13 Algarin, 'Cover me,' according to Detective Balmer."

14 I suppose by that, they want the testimony in
15 the transcript, and will you see if you can find that, Mr.
16 Reporter.

17 (Pause)

18 (At 11:23 a.m., the jury entered the
19 courtroom.)

20 THE COURT: The jury has requested the
21 transcript of the statement made by Martinez, "Cover me,"
22 according to Detective Balmer.

23 I should say to the jury that we don't have a
24 transcript but we have a reporter who has notes and he will
25 read it to you.

xxx

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2 (Record read)

3 THE COURT: Is that the part that the jury
4 referred to?

5 THE FORELADY: Yes, it is.

6 THE COURT: All right. You may leave.

7 (At 11:29, the jury left the courtroom
8 to continue deliberations.)

9 THE COURT: Apparently there was a second
10 note in here which says, "Transcript of Detective Angel
11 Rodriguez's conversation in car."

12 Mr. Clerk, take this back to the marshal and
13 ask the jury if this is something they also intended to
14 send in.

15 Well, I guess --

16 MR. SOLOMON: Your Honor, there was a
17 conversation in the car. What they probably mean is what
18 did Detective Rodriguez testify he heard my client say in
19 the car.

20 MR. SIFFERT: There was more than that. There
21 was Mr. Martinez saying, "I told you the black guy was a
22 shrimp."

23 (At 11:38 a.m., the jury returned to the
24 courtroom.)

25 THE COURT: Sorry to have to recall you but I

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2 didn't realize that there was a second note in the same
3 envelope. We didn't find it until after you had gone out.

4 The second note calls for Detective Angel
5 Rodriguez's conversation in the car and by that, I assume
6 you refer to the rebuttal testimony witness. The reporter
7 will read it, if that is what you want.

8 You let me know. If there is anything further,
9 you let me know.

10 (Record read)

11 THE COURT: Is there anything else before you go
12 out that you are calling for, any other part of the
13 testimony?

14 THE FORELADY: No, sir.

15 THE COURT: If not, you may go out.

16 (At 11:42, the jury left the courtroom to
17 continue deliberations.)

18 (At 2:20 p.m., in the courtroom, jury
19 not present.)

20 THE COURT: We have a note from the jury which
21 wants the testimony of the witness who testified as to the
22 time and whereabouts of Vazquez at the time of his arrest.

23 We will look for it.

24 MR. SIFFERT: We have found Detective Berberich
25 on cross-examination.

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2 THE COURT: Whose testimony are we looking for?

3 MR. SIFFERT: Mr. Berberich testified as to it.

4 And then Detective Kilgallon exited his vehicle on the
5 surveillance and participated in the arrest and that was
6 gone into on Detective Kilgallon's direct examination.

7 We were in the process of finding that.

8 MR. TABACOFF: If I may be heard.

9 THE COURT: See if you can help the
10 stenographer.

11 MR. TABACOFF: I wanted to say that they were
12 going over testimony before, which is not what was
13 requested.

14 THE COURT: Let's let the reporter find the
15 thing and then we will talk about what he has found.

16 MR. TABACOFF: All I want the reporter to do is
17 to look --

18 THE COURT: All I want the reporter to do is to
19 get out the testimony of the arresting officers.

20 MR. TABACOFF: I agree with you.

21 (Pause)

22 THE COURT: Bring in the jury.

23 MR. TABACOFF: May I be heard.

24 THE COURT: Yes, you will be heard.

25 MR. TABACOFF: Before the jury is brought in.

1 jbesb-25

2 I would like to know whose testimony is going to be read
3 now.

4 THE COURT: It will be your cross-examination
5 of Mr. Berberich and a few questions on Kilgallon's
6 statement.

7 MR. TABACOFF: Thank you, your Honor.

8 (At 2:35 p.m., the jury entered the
9 courtroom.)

10 THE COURT: On any notes that come out, I would
11 wish it if the forelady would sign the name to the note so
12 that I know that we have a note from the forelady.

13 This note says that you would like the testimony
14 of Vazquez's arresting officer or whichever detective
15 testified as to the time and the whereabouts of Vazquez at
16 the time of his arrest.

17 Hopefully, we have found the place in the
18 testimony that you are thinking about and the reporter will
19 read it to you.

20 This testimony has to do with, of course,
21 April 28th, sometime between 4:15 and later that afternoon.

22 (Record read)

23 THE COURT: Is there anything else that the jury
24 has in mind? That is the most that we have been able to
25 distill from the testimony thus far.

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2 JUROR NO. 7: The time involved between the
3 arrest of the other defendants and Vazquez.

4 THE COURT: This all occurred between minutes,
5 apparently.

6 The testimony just read by the reporter relates
7 to the occurrences when the signal was given to arrest and
8 when that signal was given, as you have heard the testimony.
9 That is what occurred.

10 JUROR NO. 7: Okay.

11 THE COURT: Anything else?

12 All right. You may retire.

13 (At 2:40 p.m., the jury left the courtroom
14 to continue deliberations.)

15 THE COURT: Does anybody know whether the jury
16 has had lunch?

17 THE CLERK: It's been ordered.

18 MR. TABACOFF: May I make a statement for the
19 record, your Honor?

20 THE COURT: Wait a minute. If you are going
21 to -- do you object to anything that was stated?

22 MR. TABACOFF: I object to what you stated, your
23 Honor, most strongly.

24 THE COURT: Bring the jury back here.

25 MR. TABACOFF: I did not want to do it in front

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2 of the jury.

3 THE COURT: That is the time for you to call
4 things to my attention. None of this second-guessing
5 business.

6 MR. TABACOFF: I am not second-guessing. I
7 asked you what testimony. As far as I know, the question
8 did not refer to anything of what Detective Balmer did or
9 what. The question was just where and when and the place
10 where the arrest was effected.

11 THE COURT: What are you objecting to, the fact
12 that something was read or something that I said?

13 MR. TABACOFF: Two things, your Honor.

14 THE COURT: Bring the jury back. I will have
15 you make your statement in the presence of the jury.

16 MR. TABACOFF: Thank you, your Honor.

17 (At 2:42 p.m., the jury entered the courtroom.)

18 THE COURT: Now, ladies and gentlemen, in
19 making the statement in response to your question, I made a
20 response to a juror's question.

21 I want you to ignore that response and to rely
22 solely on the testimony that you hear. I have no intention
23 to characterize the testimony. I don't want you to rely on
24 any version of the testimony that you may think I gave you
25 or on any statement in respect to the testimony that I gave

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2 you.

3 I will have the testimony reread to you as it
4 appears on the record and I will make no comment and you are
5 to be guided solely and only by what you hear from the
6 record and ignore anything that I may have said.

7 I have no intention at all of characterizing the
8 testimony or to construe it or to deal with it in any other
9 way and that will serve to eliminate any conceivable
10 dispute that may exist in respect to anything that I said.

11 As I told you throughout this trial, this case
12 is to be decided on the basis of the evidence in the record
13 and the evidence alone and not on anything that a lawyer has
14 said or the Judge has said, unless you find that the
15 testimony accords with what was said.

16 Now, we will reread the record without any
17 comment whatsoever from anybody.

18 (Record read)

19 THE COURT: You may now retire.

20 (At 2:45 p.m., the jury left the courtroom
21 to resume deliberations.)

22 THE COURT: We will stand in recess.

23 (Recess)

24 (At 3:30 p.m., in the courtroom, jury
25 present.)

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2 THE CLERK: Madam Forelady, have you reached
3 a verdict?

4 THE FORELADY: Yes, we have.

5 THE CLERK: The jury's verdict is as follows:

6 You say that you find the defendant William
7 Algarin guilty as charged.

8 You say further that you find the defendant
9 Jose Colon Rodriguez guilty as charged.

10 You also say that you find the defendant
11 Pedro Vazquez not guilty.

12 So say you all.

13 THE COURT: Poll the jury.

14 THE CLERK: Members of the jury, listen to your
15 verdict as it stands:

16 You say that you find the defendant William
17 Algarin guilty as charged and that you find the defendant
18 Jose Colon Rodriguez guilty as charged, and the defendant
19 Pedro Vazquez not guilty.

20 (Each juror, upon being asked by the Clerk,
21 "Is that your verdict?", answered in the affirmative.)

22 THE COURT: Ladies and gentlemen, that
23 completes your service in this case. The Clerk advises me
24 that you are required to report downstairs to the Clerk, who
25 will give you further instructions as to any future jury

1 jbesb-30

2 service that you may be required to render.

3 Thank you very much for your attention to this
4 case.

5 You are now excused.

6 (Jury excused)

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DEFENDANT

DUCKET NO. 100-100000-1000

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
1000, 1070

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Admission Solomon, Jr. (Name of counsel)

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a ~~100000~~ verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY on count 5.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug - controlled substance, to wit, heroin. (7.21, U.S. Code, Sections 32, 32(a)(1) and 32(b)(1)(A) and T. 13, U.S. Code, Section 2.)

The court finds the defendant was 19 years of age at date of conviction and is suitable for handling under the Federal Youth Correction Act. (18 U.S.C.A., Sections 5005-5021).

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative ~~COLEMAN, KENNETH A. POOL, JR.~~ AS A ~~WITH DEFENDER~~ on count 5 pursuant to Section 5010(a) of Title 18, U.S. Code. Imposition of sentence is suspended. Defendant is placed Probation for a period of THREE(3) YEARS, subject to the standing probation order of this Court.

SPECIAL
CONDITIONS
OF
PROBATION

SENTENCE
OR
PROBATION
ORDER

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

COMMITMENT
AND
RECOMMENDATION

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative ~~under the provisions of the Federal Probation Act, 1883, as amended~~ on count 3 pursuant to Section 3427(a) of Title 18, U.S.C. The defendant's appearance is asperated. Defendant is to be held in custody until the date of the next hearing, or until the court orders otherwise.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other authorized officer.

MICROFILM

OCT 01 1976

SIGNED BY

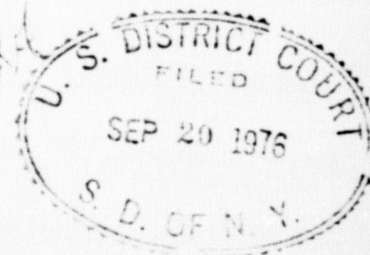
☒ U.S. District Judge

☐ U.S. Magistrate

Nelson Pellack

NELSON PELLACK

Date *SEP 20 1976*



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COPY RECEIVED
ROBERT B. FISKE JR.
NOV 18 1976
U.S. ATTORNEY
SOUTHERN DIST. OF N.Y.